



14 JUL 2006

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In re Application of :  
BLACKSHEAR et al. :  
U.S. App. No.: 10/511,362 :  
PCT No.: PCT/US03/12348 :  
Int. Filing Date: 18 April 2003 :  
Priority Date: 19 April 2002 :  
Attorney Docket No.: 4239-64828-02 :  
For: COMPOSITIONS AND METHODS FOR :  
DIAGNOSTICS AND THERAPEUTICS :  
FOR HYDROCEPHALUS :

DECISION ON PETITION  
UNDER 37 CFR 1.10

This decision is issued in response to applicants' "Petition to Correct Filing Receipt" which is being treated as a petition under 37 CFR 1.10(c) filed 23 June 2005 requesting that the above-identified application be accorded a (35 U.S.C.) 371(c) filing date of 15 October 2004. Petitioner states that the application was deposited via "Express Mail" pursuant to 37 CFR 1.10.

**BACKGROUND**

On 14 October 2004, applicants filed a transmittal letter for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a copy of the international application; and an executed declaration.

On 25 April 2005, a Notification of Acceptance was issued identifying the 35 U.S.C. 371(c) date as 14 October 2004. Subsequently, an Official Filing Receipt was issued indicating a "FILING DATE" of 14 October 2004.

On 23 June 2005, applicant filed a "Petition to Correct Filing Receipt." Petitioner avers that the application was deposited via "Express Mail" pursuant to 37 CFR 1.10 on 15 October 2004, rather than 14 October 2004.

### DISCUSSION

37 CFR 1.10(c) states:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
- (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

Petitioner has satisfied items (1) and (2) above. However, with regard to item (3), Petitioner has not submitted a true copy of the "Express Mail" mailing label (customer receipt) bearing the same "Express Mail" mailing number as identified in the certificate under 37 CFR 1.10 that accompanied the application papers showing that the original papers were, in fact, deposited as "Express Mail" with the United States Postal Service on 15 October 2004. Thus, a discrepancy has not been shown to exist as required by 37 CFR 1.10(c).

Accordingly, it is inappropriate, on the present record, to accord a filing date of 15 October 2004.

### CONCLUSION

Applicants' petition under 37 CFR 1.10(c) requesting that a filing date of 15 October 2004 is **DISMISSED** without prejudice.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10."

Any further correspondence with respect to this matter should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box

1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

A handwritten signature in black ink, appearing to read "Anthony Smith".

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